

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SAUNDRA B. WILLIAMS and U.S. POSTAL SERVICE,  
POST OFFICE, Riverdale, MD

*Docket No. 00-380; Oral Argument Held December 19, 2001;  
Issued February 6, 2002*

Appearances: *Stephen C. Robertson, Esq.*, for appellant; *Julia Mankata, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

On December 19, 1985 appellant, then a 34-year-old letter sorting machine operator, injured her left shoulder while in the performance of her duties. The Office accepted her claim for soft tissue injury to the left shoulder and scapula and paid compensation benefits. Appellant previously suffered an employment-related left shoulder sprain on September 29, 1984.

A conflict in medical opinion arose on whether appellant continued to suffer residuals of her December 19, 1985 employment injury. Office referral physicians, Dr. Henry L. Feffer and Dr. Robert Collins, concluded that appellant's injuries had resolved and that she was able to return to work. Appellant's attending physician, Dr. Daniel R. Ignacio, reported that appellant continued to have residuals of the injuries she sustained in December 1985 and that she was unable to work.

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>1</sup>

On May 19, 1987 the Office determined that a conflict in medical opinion existed. To resolve the conflict, the Office referred appellant to Dr. Robert G. Loeffler, a Board-certified orthopedic surgeon. The Office requested that Dr. Loeffler report whether appellant continued to

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<sup>1</sup> 5 U.S.C. § 8123(a).

suffer residuals of her December 19, 1985 employment injury. An appointment was arranged for June 9, 1987.

Appellant was evaluated instead on June 17, 1987 by Dr. Jeffrey A. Abend, a Board-certified specialist who is an associate of Dr. Loeffler. On June 18, 1987 Dr. Abend reported that appellant sustained an acute cervical injury at work, but he could find no objective evidence for any residual physical deficit or disability.

In a decision dated February 3, 1988, the Office terminated appellant's compensation benefits effective February 14, 1988. The Office found that the June 18, 1987 opinion of Dr. Abend was entitled to special probative value in resolving the conflict in medical opinion and was sufficient to establish that disability resulting from appellant's employment injury of December 19, 1985 had ceased.

In a decision dated October 5, 1998, an Office hearing representative found that the Office properly terminated appellant's entitlement to compensation and medical benefits on the basis that she no longer experienced residuals of her September 29, 1984 and December 19, 1985 employment injuries.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

It is well established that a physician selected by the Office to serve as an impartial medical specialist should be one wholly free to make a completely independent evaluation and judgment.<sup>2</sup> To this end, the Office has developed specific procedures pertaining to the selection of an impartial medical specialist and the nature of the evaluation conducted. In *Leonard W. Wassoner*,<sup>3</sup> the Board explained that the procedures contemplate that impartial medical specialists will be selected on a strict rotational basis to negate any appearance that preferential treatment exists between a particular physician and the Office. If the impartial medical specialist is not selected on a rotational basis, this objective is not met.

To resolve the conflict in medical opinion that arose in this case, the Office selected Dr. Loeffler to act as the impartial or referee medical specialist pursuant to 5 U.S.C. § 8123(a). Appellant was instead examined by Dr. Loeffler's associate, Dr. Abend. Because the Office did not select Dr. Abend to act as the impartial or referee medical specialist, his June 18, 1987 opinion cannot be afforded special weight and cannot be used to resolve the outstanding conflict.<sup>4</sup>

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>5</sup> After it has determined that an employee has disability

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<sup>2</sup> See *Raymond E. Heathcock*, 32 ECAB 2004 (1981).

<sup>3</sup> 37 ECAB 676 (1986).

<sup>4</sup> *Id.*

<sup>5</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>6</sup>

Because there remains an unresolved conflict in medical opinion on whether appellant continues to suffer residuals of her December 19, 1985 employment injury, the Office has not met its burden of proof to justify the termination of appellant's compensation benefits.

The October 5, 1998 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for payment of appropriate compensation benefits.

Dated, Washington, DC  
February 6, 2002

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).